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Message Text

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ORIGIN DLOS-04

INFO OCT-01 EUR-12 EA-07 ISO-00 OFA-01 L-03 ACDA-05 AGR-05

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DRAFTED BY D/LOS:TSCULLY:MZ/LCW
APPROVED BY D/LOS - TUCKER SCULLY
EUR/WE - MR. BEIGEL
EA/J - MR. DEMING
EUR/NE - MR. WORRELL
L/OES - MR. OXMAN
EUR/SOV - MR. COLBERT
OES/OFA - CDR. BUSBY(INFO)
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AMEMBASSY LONDON PRIORITY

C O N F I D E N T I A L STATE 215920

E.O. 11652: GDS

TAGS: PLOS

SUBJECT:LOS: GROUP OF FIVE MEETING IN NEW YORK

REF: STATE 214619

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1. THERE FOLLOWS TEXT OF U.S. PROPOSED AMENDMENTS AND COMMENTS ON THE COMMITTEE II SINGLE NEGOTIATING TEXT FOR DISTRIBUTION TO THE GROUP OF FIVE.

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2. EMBASSIES ARE REQUESTED TO DELIVER TEXT OF THESE PROPOSED AMENDMENTS AND COMMENTS TO HOST GOVERNMENT LOS OFFICIALS AS SOON AS POSSIBLE. IN DELIVERING THEM YOU SHOULD NOTE THAT THEY ARE PRELIMINARY AND INCLUDE ISSUES WHICH REMAIN UNDER USG REVIEW.

BEGIN TEXT:

PROPOSED AMENDMENTS AND COMMENTS TO THE COMMITTEE II SINGLE NEGOTIATING TEXT:

NOTE: THE FOLLOWING AMENDMENTS ARE PRELIMINARY AND DO NOT REPRESENT AN EXHAUSTIVE OR FINAL LIST OF ALL THE CHANGES THAT MAY BE REQUIRED IN THE COMMITTEE II SINGLE NEGOTIATING TEXT.

PART I - THE TERRITORIAL SEA AND THE CONTIGUOUS ZONE

ARTICLE 4

AMENDMENT: ADD THE FOLLOWING SENTENCE: "THE COASTAL STATE SHALL DEPOSIT SUCH CHARTS WITH THE SECRETARY-GENERAL OF THE UNITED NATIONS, WHO SHALL GIVE DUE PUBLICITY THERETO."

(COMMENT: THIS WILL ENSURE ADEQUATE NOTICE.)

ARTICLE 5

AMENDMENT: AMEND THE CLAUSE "THE SEAWARD EDGE OF THE REEF" AS FOLLOWS: "...THE SEAWARD LOW WATER LINE OF THE DRYING REEF.

(COMMENT: ACCURACY.)

ARTICLE 6.

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AMENDMENT: A. PARAGRAPH 2 SHOULD BE MOVED TO THE END OF THE ARTICLE; THE CLAUSE "IN ARTICLE 4" SHOULD BE AMENDED TO READ "IN OTHER ARTICLES."

(COMMENT: ACCURACY AND STYLE.)

AMENDMENT: B. PARAGRAPH 4: THE CLAUSE "EXCEPT IN INSTANCES" SHOULD BE AMENDED TO READ: "EXCEPT IN PARTICULAR INSTANCES".

COMMENT: THIS HELPS AVOID THE IMPLICATION THAT THERE IS A GENERAL RULE, RATHER THAN A PROVISION DEALING WITH PARTICULAR CIRCUMSTANCES.)

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AMENDMENT: C. PARAGRAPH 7:

(I) ADD "LARGE SCALE" BEFORE "CHARTS".

(II) AFTER "GEOGRAPHICAL COORDINATES OF POINTS"
INSERT: "INCLUDING SPHEROID AND DATUM INFORMATION".

(COMMENT: THIS WILL ASSIST IN PRECISE LOCATION OF
THE LINES.)

ARTICLE 8

AMENDMENT: BEGIN THE SECOND SENTENCE WITH THE
FOLLOWING CLAUSE: "EXCEPT IN CASES WHERE THERE IS UN-
LIKELY TO BE SIGNIFICANT UNCERTAINTY REGARDING THE
PRECISE LOCATION OF SUCH LINES,..."

(COMMENT: THIS WILL ENSURE NOTICE IN IMPORTANT CASES
WITHOUT PLACING AN UNNECESSARY CHARTING BURDEN ON THE
COASTAL STATE; THE COASTAL STATE CAN OF COURSE SUBMIT
ALL LINES IF IT CHOOSES.)

ARTICLE 9

AMENDMENT: ADD A NEW PARAGRAPH BETWEEN EXISTING
PARAGRAPHS 5 AND 6 AS FOLLOWS: (TEXT IDENTICAL TO THE
SECOND SENTENCE OF ARTICLE 8, AS AMENDED).
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(COMMENT: SAME AS ON ARTICLE 8).

ARTICLE 11

AMENDMENT: AMEND THE SECOND SENTENCE TO READ AS
FOLLOWS: "THE COASTAL STATE MUST CLEARLY DEMARCATE SUCH
ROADSTEADS AND INDICATE THEM, AND THE HARBOUR WORKS
REFERRED TO IN ARTICLE 10, ON LARGE SCALE CHARTS TOGETHER
WITH THEIR BOUNDARIES, DEPOSITED WITH THE SECRETARY-
GENERAL OF THE UNITED NATIONS, WHO SHALL GIVE DUE PUB-
LICITY THERETO."

(COMMENT: THIS WILL ENSURE ADEQUATE AND ACCURATE
NOTICE FOR BOTH ROADSTEADS AND PERMANENT HARBOUR WORKS.)

ARTICLE 16

AMENDMENT: A. PARAGRAPH 2(J): DELETE THE WORDS
"OR ANY OTHER" BEFORE "STATE".

(COMMENT: THE ARTICLE PROPERLY DEALS ONLY WITH THE
INTERESTS OF THE COASTAL STATE. TO GO BEYOND THIS IS

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TO IMPLY LIMITATIONS ON THE COASTAL STATE'S BEHAVIOR IN ITS OWN TERRITORIAL SEA AS WELL, WHICH IS NOT THE

SUBJECT OF THIS ARTICLE.)

AMENDMENT: B. PARAGRAPH 2(1): SUBSTITUTE "SIMILAR" FOR "OTHER".

(COMMENT: THE FACT THAT AN ACTIVITY DOES NOT HAVE A DIRECT BEARING ON PASSAGE DOES NOT AUTOMATICALLY MAKE IT NON-INNOCENT. THE WORD "SIMILAR" CONVEYS THE GENERAL IDEA OF THE TYPE OF ACTIVITY INVOLVED.)

ARTICLE 18

AMENDMENT: A. PARAGRAPH 1(A): AT THE END OF THIS CLAUSE, ADD THE WORDS "IN ACCORDANCE WITH ARTICLE 19"

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(COMMENT: ACCURACY).

AMENDMENT: B. PARAGRAPH 1(F): AT THE END OF THIS CLAUSE, ADD THE WORDS, "IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER (PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT);"

(COMMENT: THIS WILL ENSURE CONFORMITY WITH THE RELEVANT POLLUTION TEXTS. SEE, EG., ARTICLE 20(3) OF THE POLLUTION CHAPTER.)

AMENDMENT: C. PARAGRAPH 1(H): REVISE TO READ "THE PREVENTION OR INFRINGEMENT OF THE CUSTOMS, FISCAL, IMMIGRATION OR SANITARY (INCLUDING QUARANTINE AND PHYTO-SANITARY) REGULATIONS OF THE COASTAL STATE."

(COMMENT: CLARITY.)

AMENDMENT: D. PARAGRAPH 2: DELETE THIS PARAGRAPH.

(COMMENT: THIS IS AN UNNECESSARY LIMITATION IN LIGHT OF ARTICLE 21; INSOFAR AS POLLUTION IS CONCERNED, IT IS INCONSISTENT WITH THE INTENT OF ARTICLE 20(3) OF THE POLLUTION CHAPTER.)

ARTICLE 19

AMENDMENT: A. PARAGRAPH 1: DELETE THE WORDS "IT CONSIDERS IT".

(COMMENT: THE WORDS ARE SUPERFLUOUS, AND WEAKEN THE STANDARD.)

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AMENDMENT: B. PARAGRAPH 2: DELETE THIS PARAGRAPH.

(COMMENT: UNLESS ALL SHIPPING RESPECTS THE SYSTEM, IT WILL NOT BE EFFECTIVE. AT BEST THIS CLAUSE IS UNNECESSARY. AT WORST, IT IMPLIES EITHER A LIMITATION ON COASTAL STATE RIGHTS TO REQUIRE COMPLIANCE BY ALL SHIPS UNDER PARAGRAPH 1, OR A VAGUE LIMITATION ON THE MOVEMENT OF THE MOST IMPORTANT SOURCES OF ENERGY.)
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AMENDMENT: C. PARAGRAPH 4(C): DELETE THIS CLAUSE.

(COMMENT: THIS CLAUSE IS UNNECESSARY, AND COULD IN-VITE UNNECESSARY DISPUTES.)

AMENDMENT: D. PARAGRAPH 19(5): AFTER THE WORD "CHARTS," REVISE TEXT TO READ AS FOLLOWS: "SUBMITTED TO THE COMPENTENT INTERNATIONAL ORGANIZATION, WHICH SHALL GIVE DUE PUBLICITY THERETO."

(COMMENT: THIS IS TO ENSURE ADEQUATE NOTICE.)

ARTICLE 20

AMENDMENT: DELETE THIS ARTICLE

(COMMENT: THIS ARTICLE IS UNNECESSARY, AND HAS IM-PLICATIONS INCOMPATIBLE WITH THE DESIRE OF MOST NATIONS TO FIND EFFECTIVE MEANS TO CONSERVE PETROLEUM BY DE-VELOPING USE OF AND TRADE IN APPROPRIATE ADDITIONAL SOURCES OF ENERGY. AT THE LEAST, THE FINAL CLAUSE "INTERNATIONAL AGREEMENTS" SHOULD BE CHANGED TO "GENERALLY ACCEPTED INTERNATIONAL STANDARDS" TO AVOID CONFUSION.)

ARTICLE 21

AMENDMENT: PARAGRAPH 1: DELETE THE WORDS "INTERRUPT OR".

(COMMENT: THESE WORDS ARE ARGUABLY INCOMPATIBLE WITH ARTICLE 22. ARTICLE 2L IS TOO IMPORTANT TO CONTAIN LANGUAGE THAT, OF NECESSITY, WILL BE CONSTRUED TO MEAN LESS THAN IT SAYS.)

ARTICLE 22

AMENDMENT: PARAGRAPH 2: REVISE OPENING PORTION TO READ: "IN THE CASE OF SHIPS PROCEEDING TO INTERNAL WATERS OR A CALL AT A ROADSTEAD OR PORT FACILITY OUTSIDE IN-TERNAL WATERS,..."
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(COMMENT: ACCURACY.)

ARTICLE 23

AMENDMENT: PARAGRAPH 1:

(I) ADD THE WORD "RESULTING" BEFORE "DAMAGE."

(II) DELETE THE WORDS "OR TO ANY SHIPS FLYING ITS FLAG."

(COMMENT: THE DAMAGE OBVIOUSLY MUST RESULT FROM THE FAILURE TO COMPLY WITH THE LAWS AND REGULATIONS. THE DELETION OF THE REFERENCE TO SHIPS DOES NOT ALTER THE PRINCIPLE, BUT IS NECESSARY TO AVOID THE POSSIBLE IMPLICATION THAT ESTABLISHED RULES OF ADMIRALTY ARE BEING ALTERED AND, IN GENERAL, TO AVOID GETTING INTO THE THICKET OF ADMIRALTY IN THIS CONVENTION.)

AMEMDMENT: PARAGRAPH 2: INSERT "OR SIMILAR PARTY IN INTEREST" BEFORE "FOR THAT LOSS OR DAMAGE" AT END OF SENTENCE.

(COMMENT: THIS CHANGE REFLECTS THE FACT THAT DAMAGES MAY BE INCURRED BY A PERSON CHARTERING THE VESSEL.)

ARTICLE 25

AMENDMENT: PARAGRAPH 5: INSERT THE FOLLOWING WORDS AT THE START OF THE FIRST SENTENCE: "SUBJECT TO THE PROVISIONS OF CHAPTER (PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT),..."

(COMMENT: THIS WILL AVOID A POSSIBLE INCONSISTENCY WITH THE MARINE POLLUTION CHAPTER. SEE, EG. ART. 31 OF THAT CHAPTER.)

ARTICLE 29

AMENDMENT: PARAGRAPH 2: AFTER THE WORDS "SUBSECTION A" ADD THE WORDS "AND ARTICLE 24".
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(COMMENT: THE RULES IN ARTICLE 24 SHOULD APPLY TO WARSHIPS.)

ARTICLE 30

AMENDMENT: REVISE THE LAST CLAUSE TO READ, "...THE

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COASTAL STATE MAY REQUIRE IT TO LEAVE THE TERRITORIAL SEA BY A SAFE AND EXPEDITIOUS ROUTE."

(COMMENT: THE ADDITIONAL LANGUAGE IN THE TEXT "AS MAY BE DIRECTED BY THE COASTAL STATE" IS UNNECESSARY TO PROTECT COASTAL STATE INTERESTS, IS INCOMPATIBLE WITH THE SOVEREIGN IMMUNITY OF WARSHIPS, AND COULD CAUSE UNNECESSARY MISUNDERSTANDING.)

ARTICLE 32

AMENDMENT: DELETE THE PHRASE "OR TO ANY SHIPS FLYING ITS FLAG."

(COMMENT: SEE COMMENT ON ARTICLE 23, PARAGRAPH 1.)

ARTICLE 33

(COMMENT: THIS ARTICLE IS OF QUESTIONABLE UTILITY, AND POSES A POTENTIAL DANGER TO SHIPPING. SHOULD THERE BE SIGNIFICANT ATTEMPTS TO EXPAND ITS SCOPE SUBSTANTIVELY OR GEOGRAPHICALLY, IT WOULD BE BEST TO DELETE THE ENTIRE ARTICLE. IF THE ARTICLE IS RETAINED, DELIMITATION PROVISIONS SUBSTANTIALLY IDENTICAL TO THOSE IN ARTICLE 13 SHOULD BE ADDED.)

PART II - STRAITS USED FOR INTERNATIONAL NAVIGATION

ARTICLE 35

A.(COMMENT ON SUBITEM (A): THERE IS NO REFERENCE TO THE ECONOMIC ZONE. REFERENCES TO AREAS BEYOND THE TER-RITORIAL SEA HERE AND IN ARTICLE 37, OTHER ARTICLES IN CONFIDENTIAL

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THIS CHAPTER AND ELSEWHERE IN SIMILAR CONTEXTS SHOULD BE THE SAME. SEE PROPOSED AMENDMENTS TO ARTICLE 73, PURSUANT TO WHICH REFERENCES TO THE ECONOMIC ZONE IN THESE CONTEXTS WOULD NOT BE NECESSARY.)

AMENDMENT: B. IN SUBITEM (C), CHANGE THE OPENING CLAUSE "THE LEGAL STATUS OF STRAITS" TO READ "THE EXISTING LEGAL REGIME IN STRAITS."

(COMMENT: THIS LANGUAGE WAS CONSIDERED MORE ACCURATE BY THE STATES CONCERNED."

ARTICLE 38

AMEMDMENT: PARAGRAPH 1: AMEND THE CLAUSE "BY AN

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ISLAND OF THE STRAIT STATE" TO READ, "BY AN ISLAND AND THE MAINLAND OF THE STRAIT STATE."

(COMMENT: THE PRECISE SITUATION INTENDED BY THE CLAUSE IS A STRAIT FORMED BY AN ISLAND OFF THE MAINLAND OF THE SAME STATE. AN INTERPRETIVE STATEMENT WILL BE NEEDED.)

ARTICLE 39

AMENDMENT: PARAGRAPH 3(A): INSERT THE WORD "THE" BETWEEN "OBSERVE" AND "RULES".

(COMMENT: TO ENSURE CLARITY AND AVOID INCONSISTENCY WITH TEXTS IN OTHER LANGUAGES. IT IS OUR UNDERSTANDING THAT SPONSORS WOULD MAKE INTERPRETIVE STATEMENTS FOR THE RECORD THAT THE RULES REFERRED TO ARE THOSE WHICH APPLY OVER THE HIGH SEAS.)

ARTICLE 40

AMENDMENT: A. PARAGRAPH 2: REPLACE THE CLAUSE "AND AFTER GIVING DUE PUBLICITY THERETO" WITH THE CLAUSE, "AND SUBJECT TO THE PROVISIONS OF THIS ARTICLE".

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(COMMENT: ALL OF THE PROVISIONS OF THE ARTICLE, INCLUDING THE NOTICE PROVISION IN PARAGRAPH 6, SHOULD APPLY TO SUBSTITUTIONS.)

AMENDMENT: B. PARAGRAPH 3: DELETE THE FIRST WORD, "SUCH", AND THE LAST WORD, "REFERRED".

(COMMENT: ACCURACY AND STYLE.)

AMENDMENT: C. PARAGRAPH 6: AFTER THE WORD "CHARTS", REVISE THE REMAINING PART OF THE TEXT TO READ: "SUBMITTED TO THE COMPETENT INTERNATIONAL ORGANIZATION, WHICH SHALL GIVE DUE PUBLICITY THERETO."

(COMMENT: THIS IS TO ENSURE ADEQUATE NOTICE.)

ARTICLE 41

AMENDMENT: A. PARAGRAPH 1(A): INSERT A COMMA AFTER

THE WORDS "MARINE TRAFFIC".

(COMMENT: TO ENSURE THAT THE PROVISO IS PROPERLY UNDERSTOOD TO APPLY TO THE ENTIRE CLAUSE. THE WORDS "THE SAFETY OF NAVIGATION AND THE REGULATION OF MARINE

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TRAFFIC" ARE IN FACT UNNECESSARY, AND THEIR DELETION WOULD BE PREFERABLE IN ORDER TO AVOID FUTURE MISINTERPRETATIONS.)

AMENDMENT: B. PARAGRAPH 1(B): DELETE THE COMMA AFTER THE WORD "POLLUTION" AND INSERT IN ITS PLACE THE WORD "BY".

(COMMENT: THIS ENSURES THAT THE CLAUSE IS PROPERLY READ TO APPLY ONLY TO INTERNATIONAL DISCHARGE STANDARDS. THE WORDS "THE PREVENTION OF POLLUTION" ARE IN FACT UNNECESSARY, AND THEIR DELETION WOULD BE PREFERABLE IN ORDER TO AVOID FUTURE MISINTERPRETATIONS.)

AMENDMENT: C. PARAGRAPH 5. DELETE THE WORDS "OR ANY OTHER STATE IN THE VICINITY OF THE STRAIT".
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(COMMENT: THIS ARTICLE DEALS ONLY WITH THE INTERESTS OF THE FLAG STATE AND THE STRAIT STATE. THE LAWS AND REGULATIONS OF THAT STATE MAY OR MAY NOT BE RELEVANT TO LIABILITY UNDER INTERNATIONAL LAW TO A THIRD STATE. AS DRAFTED, THE ARTICLE IMPLIES A STRAIT STATE DUTY TO LEGISLATE IN FAVOR OF THIRD STATES, AND INDEED AUTOMATIC STATE LIABILITY TO SUCH STATES FOR VIOLATION OF ITS OWN LAWS AND REGULATIONS.)

ARTICLE 42

AMENDMENT: THE CLAUSE "IN AID OF INTERNATIONAL NAVIGATION OR" SHOULD BE CHANGED TO "IN AID OF INTERNATIONAL NAVIGATION AND".

(COMMENT: THE COOPERATIVE PROJECTS SHOULD EMBRACE BOTH OBJECTIVES.

ARTICLE 43

AMENDMENT: ADD THE FOLLOWING NEW PARAGRAPH (AS PARAGRAPH 2): "2. IF THE STRAIT STATE ACTS IN A MANNER CONTRARY TO THIS PART AND LOSS OR DAMAGE TO ANY FOREIGN SHIP OR AIRCRAFT RESULTS, THE STRAIT STATE SHALL COMPENSATE THE OWNERS OF SUCH SHIP OR AIRCRAFT OR SIMILAR PARTY IN INTEREST FOR THAT LOSS OR DAMAGE."

(COMMENT: THIS DUTY WILL PROTECT THE UNDERLYING RIGHT OF PASSAGE.)

ARTICLE 44

AMENDMENT: PARAGRAPH 1: THE REFERENCE TO "PART III" SHOULD BE TO "PART I".

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(COMMENT: ACCURACY. THE CONTENT OF THIS ARTICLE IS STILL UNDER STUDY.)

GENERAL DRAFTING NOTE ON PART II:

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THE TERMS "A STRAIT STATE" AND "THE STRAIT STATE" ARE USED INTERCHANGABLY IN THIS PART. FOR THE SAKE OF CONSISTENCY, ONE OR THE OTHER SHOULD BE USED THROUGHOUT. IT WOULD APPEAR THAT "THE STRAIT STATE" IS THE PREFERABLE TERM. SEE ARTICLES 38-43.

PART III - THE EXCLUSIVE ECONOMIC ZONE

ARTICLE 45

AMENDMENT: A. PARAGRAPH 1(B): AT THE END OF THE CLAUSE, ADD THE WORDS "AS PROVIDED FOR IN THIS CONVENTION."

(COMMENT: THIS IS A NECESSARY CROSS-REFERENCE TO ARTICLE 48, DRAFTED AS IN THE EVENSEN TEXT.)

AMENDMENT: B. PARAGRAPH 1(C): DELETE THE CLAUSE "(II)SCIENTIFIC RESEARCH;"

(COMMENT: INSERTION OF THE CLAUSE HERE PREJUDICES THE OUTCOME IN COMMITTEE III. SEE THE NEXT SUGGESTED AMENDMENT.)

AMENDMENT: C. PARAGRAPH 1(D): REVISE TO READ: "JURISDICTION AS PROVIDED FOR IN THIS CONVENTION WITH REGARD TO SCIENTIFIC RESEARCH AND PRESERVATION OF THE MARINE ENVIRONMENT, INCLUDING POLLUTION CONTROL AND ABATEMENT."

(COMMENT: THIS CONFIRMS THE EXISTENCE OF COASTAL STATE RIGHTS, BUT LEAVES THEIR SUBSTANCE TO THE COMMITTEE III TEXTS. THIS IS NECESSARY TO AVOID PREJUDICE TO OR INCONSISTENCY WITH THE POLLUTION AND SCIENTIFIC RESEARCH CHAPTERS.)

AMENDMENT: D. BETWEEN PARAGRAPHS 2 AND 3, ADD A NEW PARAGRAPH AS FOLLOWS: "STATES SHALL COMPLY WITH THE LAWS AND REGULATIONS OF THE COASTAL STATE MADE IN CONFORMITY WITH THE PROVISIONS OF THIS CONVENTION AND OTHER RULES OF INTERNATIONAL LAW."
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(COMMENT: THIS TEXT CURRENTLY APPEARS AT THE END OF ARTICLE 47(4); IN THAT POSITION IT MIGHT BE READ TO IMPLY UNINTENDED RESTRICTIONS ON NAVIGATION. ITS MOVEMENT TO ARTICLE 45, WHICH ENUMERATES THE COASTAL STATE RIGHTS, ACCOMPLISHES THE PURPOSE WITHOUT UNDESIRABLE IMPLICATIONS OF REGULATORY POWER OVER NAVIGATION.)

ARTICLE 47

AMENDMENT: A. PARAGRAPH 2: SUBSTITUTE THE WORDS "PART V" FOR THE CLAUSE "ARTICLES 74, 76.AND 97 AND 100 TO 102".

(COMMENT: ALL OF THE PROVISIONS OF PART V SHOULD APPLY IN SO FAR AS THEY ARE NOT INCOMPATIBLE WITH THE PROVISIONS OF PART III. NO CHANGE IN LAW IS INTENDED WITH RESPECT TO THE FREEDOMS BEING PRESERVED.)

AMENDMENT: B. PARAGRAPH 3: DELETE THE WORDS "ON THE BASIS OF EQUITY AND".

(COMMENT: THE LANGUAGE ADDS NOTHING TO THE LEGAL STANDARD, AND IMPLIES AN INCONSISTENCY BETWEEN EQUITY AND THE APPLICABLE STANDARD.)

AMENDMENT C. PARAGRAPH 4: TRANSFER THE PORTION OF THE SENTENCE AFTER "RIGHTS AND DUTIES OF THE COASTAL STATE" TO ARTICLE 45.

(COMMENT: THE REMAINING PHRASE HERE COULD BE IN-CORRECTLY READ TO IMPLY PLENARY COASTAL STATE AUTHORITY OVER NAVIGATION. ITS TRANSFER TO ARTICLE 45 WOULD RECTIFY THE PROBLEM.)

ARTICLE 48

AMENDMENT: A. PARAGRAPH 1(C) DELETE THE WORD "MAY".

(COMMENT: THE TEST SHOULD BE ACTUAL INTERFERENCE RATHER THAN A POSSIBILITY OF INTERFERENCE. THE COASTAL CONFIDENTIAL

STATE IS FULLY PROTECTED AGAINST ANY EVENTUALITY OF INTER-FERENCE.)
AMENDMENT: B. PARAGRAPH 5: THE LAST WORD SHOULD BE SINGULAR, IE. "ORGANIZATION."

(COMMENT: WE SHOULD NOT ENCOURAGE A MULTIPLICITY OF ORGANIZATIONS. THE SINGULAR LEAVES OPEN THE POSSIBILITY OF SEVERAL ORGANIZATIONS WITHOUT ENCOURAGING SUCH A RESULT.)

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ARTICLE 49

AMENDMENT: DELETE THIS ARTICLE.

(COMMENT: THE ARTICLE PURPORTS TO RESOLVE THE MOST IMPORTANT ASPECT OF THE SCIENTIFIC RESEARCH NEGOTIATION WITHIN THE MANDATE OF COMMITTEE III.

ARTICLE 50

AMENDMENT: A. PARAGRAPH 3: FOR THE FIRST WORD, "SUCH", SUBSTITUTE THE CLAUSE, "ALLOWABLE CATCH AND OTHER CONSERVATION AND MANAGEMENT..."

(COMMENT: TO CLARIFY THE SUBJECT OF THE ARTICLE.)

AMENDMENT B. PARAGRAPH 3: DELETE THE CLAUSE, "INCLUDING THE ECONOMIC NEEDS OF COASTAL FISHING COMMUNITIES AND THE SPECIAL REQUIREMENTS OF DEVELOPING COUNTRIES, AND".

(COMMENT: THESE PARTICULAR WORDS ARE SPECIFICALLY RELEVANT TO THE QUESTION OF ALLOCATION UNDER ARTICLE 51, WHERE THE ISSUE IS ALREADY DEALT WITH. THE GENERAL REFERENCE TO ECONOMIC FACTORS IS PREFERABLE TO THIS SPECIFIC ENUMERATION, PARTICULARLY IN THE CONTEXT OF CONSERVATION, SINCE THE WORDS COULD BE READ AS A LIMITATION ON THE COASTAL STATE'S RIGHT TO IMPOSE STRICT CONSERVATION STANDARDS APPLICABLE TO DISTANT WATER FISHERMEN FROM DEVELOPING COUNTRIES.)

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ARTICLE 51

AMENDMENT: PARAGRAPH 4: MOVE THE WORDS "CONSISTENT WITH THE PROVISIONS OF THE PRESENT CONVENTION" TO THE END OF THE FIRST SENTENCE, AND DELETE THE REMAINDER OF THIS PARAGRAPH.

(COMMENT: THIS IS A CONVENTION ON THE LAW OF THE SEA, NOT AN ESSAY ON FISHERIES MANAGEMENT. ALL THAT IS NEEDED IS THE DUTY TO COMPLY WITH COASTAL STATE TERMS AND CONDITIONS. ONE CAN ADD A HUNDRED INTER ALIAS, AND A TRAINED LAWYER WILL STILL READ A LIST THIS LONG AND DETAILED AS ESSENTIALLY EXHAUSTIVE. ON THE OTHER HAND, THE SIMULTANEOUS APPLICATION OF ALL THE ITEMS COULD RENDER ANY FOREIGN FISHING IMPOSSIBLE; SUCH A RESULT SHOULD NOT BE ENCOURAGED OR IMPLIED.

ARTICLE 52

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AMENDMENT: PARAGRAPH 1: AMEND THE CLAUSE "CONSERVATION AND DEVELOPMENT" TO READ "CONSERVATION, EQUITABLE ALLOCATION, AND DEVELOPMENT."

(COMMENT: IF THE STOCKS LIE ACROSS THE BOUNDARY, IT WILL BE NECESSARY FOR THE NEIGHBORING COASTAL STATES TO EQUITABLY ALLOCATE THE STOCKS BETWEEN THEM. THIS SHOULD BE REFERRED TO SPECIFICALLY IN ORDER TO AVOID ANY UNCERTAINTY IN THIS REGARD.)

ARTICLE 53

(COMMENT: THIS ARTICLE SHOULD BE REVISED IN THE LIGHT OF CONSULTATIONS AMONG THE DELEGATIONS CONCERNED . THE WORDS "IN ADDITION TO THE OTHER PROVISIONS OF THIS PART" BEG THE QUESTION.)

ARTICLE 54

AMENDMENT: A. PARAGRAPHS 2, 3(A), AND 4: IN PLACE OF THE WORD "WITHIN", SUBSTITUTE THE WORDS "LANDWARD OF THE OUTER LIMITS OF".
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(COMMENT: THE RELEVANT PROVISIONS REFLECTING THE PARTICULAR CHARACTERISTICS OF THESE SPECIES ARE INTENDED TO APPLY TO ALL WATERS LANDWARD OF 200 MILES.)

AMENDMENT: B. PARAGRAPH 3(A): INSERT AFTER THE WORDS "ECONOMIC DISLOCATION OF A STATE" THE WORDS "WHOSE NATIONALS HAVE HABITUALLY FISHED SUCH STOCKS."

(COMMENT: THIS CLARIFIES THE INTENT; THE LANGUAGE PARALLELS THE SIMILAR REFERENCE IN ARTICLE 51(3).)

PART IV - THE CONTINENTAL SHELF

ARTICLE 62

AMENDMENT: SUBSTITUTE THE FOLLOWING ARTICLE 62:

1. FOR THE PURPOSES OF THIS CONVENTION, THE CONTINENTAL SHELF COMPRISES THE SEABED AND SUBSOIL OF THE SUBMARINE AREAS ADJACENT TO THE COAST, AND OUTSIDE THE AREA OF THE TERRITORIAL SEA, TO A DISTANCE OF 200 NAUTICAL MILES FROM THE BASELINE FROM WHICH THE BREADTH OF THE TERRITORIAL SEA IS MEASURED OR, WHERE THE CONTINENTAL MARGIN EXTENDS BEYOND THAT LIMIT, TO THE OUTER EDGE OF THE CONTINENTAL MARGIN AS DEFINED IN THIS ARTICLE.

2. THE CONTINENTAL MARGIN IS THE NATURAL PROLONGATION

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OF THE LAND MASS OF THE COASTAL STATE, AND DOES NOT IN-
CLUDE THE DEEP OCEAN FLOOR. IN THE ABSENCE OF EVIDENCE
SATISFACTORY TO THE COMMISSION REFERRED TO IN PARAGRAPH 3
THAT THE CONTINENTAL MARGIN EXTENDS TOA DIFFERENT LIMIT,
THE OUTER EDGE OF THE CONTINENTAL MARGIN SHALL BE DEEMED
TO BE BOUNDED BY A SERIES OF STRAIGHT LINES, NOT MORE
THAN SIXTY NAUTICAL MILES IN LENGTH, CONNECTING FIXED
POINTS LOCATED NOT MORE THAN SIXTY NAUTICAL MILES SEA-
WARD OF THE FOOT OF THE CONTINENTAL SLOPE, ESTIMATED AS

THE POINT OF MAXIMUM CHANGE IN GRADIENT OF THE BASE OF THE
MARGIN.

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3. A CONTINENTAL MARGIN BOUNDARY COMMISSION SHALL BE
ESTABLISHED IN ACCORDANCE WITH THE PROVISIONS OF ANNEX
THE COASTAL STATE SHALL SUBMIT TO THE COMMISSION PRECISE
CHARTS AND DESCRIPTIONS OF THE OUTER EDGE OF THE CON-
TINENTAL MARGIN WHERE THE CONTINENTAL MARGIN EXTENDS BE-
YOND THE ECONOMIC ZONE, TOGETHER WITH SUPPORTING DATA.
IF SATISFIED THAT THE ORIGINAL OR AMENDED DESCRIPTION
CONFORMS TO THIS CONVENTION, THE COMMISSION SHALL CER-
TIFY THE CHARTS AND DESCRIPTIONS TO THE COASTAL STATE AND
THE DESCRIPTIONS TO THE COASTAL STATE AND THE INTERNA-
TIONAL AUTHORITY, ESTABLISHED BY PART(BLANK), AS DEFIN-
ING THE PERMANENT OUTER LIMIT OF THE CONTINENTAL SHELF IN
SUCH AREAS. IN THE EVENT DISAGREEMENTS CANNOT BE RESOLVED
BETWEEN THE COASTAL STATE AND THE COMMISSION, THE COASTAL
STATE MAY TAKE THE MATTER TO DISPUTE SETTLEMENT IN AC-
CORDANCE WITH CHAPTER (BLANK).

4. WHERE THE CONTINENTAL MARGIN DOES NOT EXTEND BEYOND
THE ECONOMIC ZONE, THE COASTAL STATE SHALL SUBMIT TO THE
INTERNATIONAL AUTHORITY CHARTS AND DESCRIPTIONS OF THE
OUTER LIMIT OF THE ECONOMIC ZONE MEASURED IN ACCORDANCE
WITH THE CONVENTION. SUCH CHARTS AND DESCRIPTIONS SHALL
IDENTIFY THE PERMANENT OUTER LIMIT OF THE CONTINENTAL
SHELF IN SUCH AREAS.

ARTICLE 65

AMENDMENT: PARAGRAPH 4: FOR THE CLAUSE, "NOTHING
IN THIS PART SHALL AFFECT," SUBSTITUTE THE CLAUSE,
"THE PROVISIONS OF PARAGRAPH 1 OF THIS ARTICLE SHALL NOT
AFFECT....."

(COMMENT: THE EXISTING LANGUAGE IS TOO BROAD, AND
INACCURATELY IMPLIES THAT RELEVANT COASTAL STATE DUTIES
IN EXERCISING ITS JURISDICTION ARE INAPPLICABLE.)

ARTICLE 66

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AMENDMENT: CHANGE THE CLAUSE "ON THE CONTINENTAL SHELF" TO READ "FOR THE EXPLORATION OF THE CONTINENTAL SHELF AND THE EXPLOITATION OF ITS NATURAL RESOURCES."
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(COMMENT: JURISDICTION BEYOND 200 MILES SHOULD NOT EXCEED THAT IN THE EXISTING CONTINENTAL SHELF CONVENTION.)

ARTICLE 69

AMENDMENT: A. PARAGRAPH 1: AMEND THE CLAUSE "PAYMENTS OR CONTRIBUTIONS IN KIND" TO READ "PAYMENTS OR, IN ITS DISCRETION, EQUIVALENT CONTRIBUTIONS IN KIND OF THE RESOURCE ITSELF,".

(COMMENT: IT SHOULD BE CLEAR THAT THE CHOICE OF MAKING MONETARY PAYMENTS OR CONTRIBUTIONS IN KIND SHOULD REST WITH THE COASTAL STATE. IT SHOULD ALSO BE CLEAR THAT CONTRIBUTIONS IN KIND DOES NOT REFER TO ANY PRODUCT.)

AMENDMENT: B. PARAGRAPH 2: (I) FOR "X", SUBSTITUTE THE WORDS "THE PERCENT".

(II) AT THE END OF THE FIRST SENTENCE, ADD THE CLAUSE, "SPECIFIED IN PARAGRAPH (BLANK)OF THE ARTICLE."

(COMMENT: THIS LEAVES ROOM FOR A SLIDING-SCALE FORMULA.)

AMENDMENT: C. PARAGRAPH 3: DELETE THIS PARAGRAPH.

(COMMENT: THE POINT OF REVENUE-SHARING IS TO ACCOMMODATE THE INTERESTS OF THE INTERNATIONAL COMMUNITY WITH RESPECT TO THE CONTINENTAL MARGIN BEYOND 200-MILES, AND TO DISTRIBUTE A PORTION OF THE BENEFITS ON THE BASIS OF CRITERIA OTHER THAN GEOGRAPHIC ACCIDENT.)

AMENDMENT: D. PARAGRAPH 4: (I) SUBSTITUTE THE FOLLOWING FOR THAT PORTION OF THE FIRST SENTENCE FOLLOWING THE WORDS "INTERNATIONAL AUTHORITY":

"... OR AN INTERNATIONAL OR REGIONAL DEVELOPMENT ORGANIZATION RECOGNIZED BY THE UNITED NATIONS. THE CONFIDENTIAL

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PARTIES TO THIS CONVENTION SHALL AGREE ON NECESSARY PAYMENT AND OTHER RELEVANT PROCEDURES."

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(II) REVISE THE CLAUSE IN THE SECOND SENTENCE, "THE INTERNATIONAL AUTHORITY SHALL DISTRIBUTE THESE PAYMENTS AND CONTRIBUTIONS" TO READ: "THE INTERNATIONAL AUTHORITY AND OTHER RECIPIENT ORGANIZATIONS SHALL DISTRIBUTE THESE PAYMENTS AND CONTRIBUTIONS TO STATES PARTIES TO THIS CONVENTION...."

(COMMENT: THE FLEXIBILITY IN CHOOSING THE RECIPIENT ORGANIZATION MAY APPEAL TO COASTAL STATES, INCLUDING DEVELOPING COASTAL STATES, THAT ARE RELUCTANT TO SUPPORT

THIS COMPROMISE. BENEFITS SHOULD NOT GO TO NON-PARTIES TO THE CONVENTION.)

AMENDMENT: E. ADD A NEW PARAGRAPH TO THIS ARTICLE AS FOLLOWS:

"THE PAYMENTS AND CONTRIBUTIONS REFERRED TO IN PARAGRAPH 2 SHALL BE MADE ANUALLY WITH RESPECT TO ALL PRODUCTION AT A SITE AFTER THE FIRST FIVE YEARS OF PRODUCTION AT THAT SITE; THEY SHALL BE 1 FOR THE SIXTH YEAR, SHALL INCREASE BY 1 FOR EACH SUBSEQUENT YEAR UNTIL THE TENTH YEAR, AND SHALL REMAIN AT 5 THEREAFTER."

(COMMENT: THE SLIDING SCALE IS INTENDED TO ACCOMMODATE THE CONCERNS OF SUPPORTERS OF PROFIT-SHARING, SINCE IT ALLOWS A BROADER MARGIN FOR RECOUPING INVESTMENT IN EARLIER YEARS, BUT AVOIDS THE ACCOUNTING PROBLEMS OF PROFIT-SHARING.)

ARTICLE 71

AMENDMENT: DELETE THIS ARTICLE.

(COMMENT: SAME AS ARTICLE 49).

ARTICLE 72

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AMENDMENT: DELETE THIS ARTICLE.

(COMMENT: SINCE DEPTH OF WATER IS NO LONGER THE BOUNDARY CRITERION, AND THERE IS AN INTERNATIONAL REGIME ON THE OTHER SIDE, THIS ARTICLE IS SUPERFLUOUS.)

PART V - HIGH SEAS

ARTICLE 73

AMENDMENT: DELETE THE WORDS "IN THE EXLUSIVE ECONOMIC ZONE". ADD THE FOLLOWING WORDS AT THE END OF

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THIS ARTICLE:

"PROVIDED THAT THE PROVISIONS OF THIS PART SHALL APPLY TO THE ECONOMIC ZONE ONLY IN SO FAR AS THEY ARE NOT INCOMPATIBLE WITH THE PROVISIONS OF PARTIII."

(COMMENT: THIS IS A REASONABLE ACCOMMODATION ON THE ISSUE. THE COMPLETE EXCLUSION OF THE ECONOMIC ZONE FROM HIGH SEAS COULD RESULT IN SIGNIFICANT CONFUSION IN INTERPRETING OTHER IMPORTANT TREATIES, SUCH AS

ARTICLE 12 OF THE ICAO CONVENTION, AND THE 1949 LAWS OF WAR CONVENTIONS. THERE SHOULD BE CONSEQUENT DRAFTING CHANGES IN THE STRAITS CHAPTER AND SIMILAR NAVIGATION CONTEXTS WHERE THERE WOULD BE NO NEED FOR SEPARATE REFERENCES TO THE HIGH SEAS AND ECONOMIC ZONE.

ARTICLE 95

AMENDMENT: PARAGRAPH 4: ADD THE WORDS "GENERALLY ACCEPTED" BEFORE "INTERNATIONAL REGULATIONS."

PART VII - ARCHIPELAGOS

ARTICLE 118

AMENDMENT: A. PARAGRAPHS 1, 5 AND 6: CHANGE THE PHRASE "STRAIGHT BASELINES" TO "ARCHIPELAGIC BASELINES."

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(COMMENT: TO AVOID CONFUSION, AS THE WATERS ARE NOT INTERNAL.)

AMENDMENT: B. PARAGRAPH 8: AFTER THE WORDS, "LYING WITHIN THE FRINGING REEFS OF ISLANDS AND ATOLLS," DELETE THE REMAINDER AND SUBSTITUTE, "THAT COULD BE ENCLOSED BY BASELINES PURSUANT TO ARTICLE 5."

(COMMENT: THIS IS SIMPLER AND AVOIDS OVER-BROAD INTERPRETATIONS AND ARGUMENTS BY ANALOGY. THE INTENDED EFFECT IS THE SAME.)

ARTICLE 124

AMENDMENT: A. PARAGRAPH 5: THE BEGINNING SHOULD READ, "THE WIDTH OF A SEALANE AND AIR ROUTE SHALL...."

(COMMENT: CLARITY.)

AMENDMENT: B. PARAGRAPH 12: AFTER THE WORDS "DOES NOT DESIGNATE SEALANES," ADD THE WORDS "OR AIR ROUTES."

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AT THE END OF THE SENTENCE, SUBSTITUTE THE WORD "ARCHI-
PELAGO" FOR THE WORDS "ARCHIPELAGIC WATERS."

(COMMENT: ACCURACY.)

ARTICLE 125

AMENDMENT: PARAGRAPH 3(A): THE BEGINNING SHOULD
READ, "OBSERVE THE RULES..."

(COMMENT: SAME AS ARTICLE 39).

ARTICLE 126

AMENDMENT: ADD A NEW PARAGRAPH 2 AS FOLLOWS:

"IF AN ARCHIPELAGIC STATE ACTS IN A MANNER CONTRARY
TO THIS PART AND LOSS OR DAMAGE TO ANY FOREIGN SHIP OR
AIRCRAFT RESULTS, THE ARCHIPELAGIC STATE SHALL COMPEN-
SATE THE OWNERS OF SUCH SHIP OR AIRCRAFT OR SIMILAR
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PARTY IN INTEREST FOR THAT LOSS OR DAMAGE."

ARTICLE 128

AMENDMENT: A. PARAGRAPH 1(A): PLACE A COMMA AFTER
"MARINE TRAFFIC."

(COMMENT: SAME AS ARTICLE 41(1)(A).)

AMENDMENT: B. PARAGRAPH 1(B): DELETE THE COMMA
AFTER THE WORD "POLLUTION" AND INSERT IN ITS PLACE THE
WORD "BY".

(COMMENT: SAME AS ARTICLE 41(1)(B).)

ARTICLE 129

AMENDMENT: A. THIS TEXT SHOULD BE PARAGRAPH 5
OF ARTICLE 128.

(COMMENT: THE ISSUES OF COASTAL STATE AUTHORITY
AND SOVEREIGN IMMUNITY SHOULD BE TREATED TOGETHER TO
AVOID AMBIGUITY. THIS WAS DONE IN ARTICLE 41.)

AMENDMENT: B. DELETE THE WORDS, "OR OTHER STATES
IN ITS VICINITY."

(COMMENT: SAME AS ARTICLE 41(5).)

ARTICLE 131

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AMENDMENT: DELETE THIS ARTICLE.

(COMMENT: EITHER THIS ARTICLE IS SUPERFLUOUS, OR
IT CAN BE USED TO IMPLY AN ABSURD RESULT, VIZ., THAT
DESPITE ALL THE OTHER PROVISIONS OF THE CONVENTION,
AND THE EXPRESS LIMITATION OF THE ARCHIPELAGO CHAPTER
TO INDEPENDENT ISLAND STATES, A CONTINENTAL STATE CAN
ARGUE THERE IS SOME SPECIAL UNDEFINED STATUS FOR ITS

OCEANIC ARCHIPELAGOS, PRESUMABLY EVEN WITHOUT REFERENCE
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TO THE GEOGRAPHIC AND NAVIGATIONAL LIMITATIONS OF THE
CONVENTION.)

ARTICLE 132

(COMMENT: ASIDE FROM THE BROADER ISSUES RAISED, A
TECHNICAL QUESTION ARISES REGARDING THE USE OF ROCKS
FOR STRAIGHT BASELINES AND IN SITUATIONS (EG, ART.12)
WHERE EVEN LOW-TIDE ELEVATIONS AFFECT THE EXTENT OF THE
ECONOMIC ZONE.)

ARTICLE 133

AMENDMENT: SUBSTITUTE "SURROUNDED BY" FOR
"SURROUNDING."

(COMMENT: ACCURACY)

ARTICLE 136

AMENDMENT: DELETE THIS ARTICLE.

(COMMENT: A LAW OF THE SEA CONVENTION IS NOT THE
PLACE TO DEAL WITH POLITICAL ISSUES OF THIS SORT.
STATES ARE FULLY ACCOUNTABLE IN THE APPROPRIATE POLITICAL
ORGAN NOW FOR MALADMINISTRATION OF DEPENDENCIES, ON LAND
OR AT SEA. PARAGRAPH 1 WOULD RENDER IT IMPOSSIBLE TO EN-
SURE THAT COASTAL STATE DUTIES (EG, NON-INTERFERENCE)
WITH NAVIGATION, ACCESS OF THIRD STATES TO FISHERIES)
WOULD BE MET. PARAGRAPH 2 WOULD ENCOURAGE NEW TERRITORIAL
DISPUTES ON LAND AND REVIVE OLD ONES, CONTRARY TO RECENT
TRENDS IN INTERNATIONAL RELTIONS. UNDER PARAGRAPH 3,
WHERE INDIGENOUS TECHNOLOGY DOES NOT EXIST, THE ADMINI-
STERING STATE MAY BE PRECLUDED FROM SUPPLYING IT; THIS
IS ABSURD. TAKEN AS A WHOLE, FAR FROM ENCOURAGING SELF-
DETERMINATION, THE ARTICLE COULD MAKE COMPLETE ANNEXATION
THE ONLY VIABLE ECONOMIC ALTERNATIVE FOR BOTH THE
"METROPOLITAN" POWER AND THE PEOPLE OF THE DEPENDENCY WHO
NEED TO RELY ON MARINE RESOURCES.) KISSINGER

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